



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Metropolitan Federal Network
File: B-232096
Date: November 21, 1988

DIGEST

1. Request for quotations was clear that agency required offerors to directly lease a job fair site and protester should have protested this prior to the due date for best and final quotations.
2. Protester's objection that it was given inadequate time to offer another job fair site should have been protested prior to due date for best and final quotations.
3. Discussions were meaningful where agency pointed out deficiencies and permitted offeror to revise its offer to attempt to correct those deficiencies.

DECISION

Metropolitan Federal Network protests the award of a purchase order to Bazaco, Roemer and Company, Inc., to conduct a job fair under request for quotations (RFQ) No. 88-2180, issued by the Office of Personnel Management (OPM). Metropolitan's offer was rejected because of the job fair site proposal.

We dismiss the protest in part and deny it in part.

Metropolitan notes that the RFQ did not stipulate that the Department of Labor lobby site which it proposed was not acceptable, and that OPM informed Metropolitan only 5 days prior to the due date for best and final quotations that the site was unacceptable. Metropolitan asserts that it requested a meeting with OPM to discuss this matter but the request was denied as unnecessary. Metropolitan's best and final quotation included the Labor lobby site and, as a result, its offer was rejected as technically unacceptable. Metropolitan argues that OPM's action eliminating it from the competition was improper and that Metropolitan has a

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better job fair record than Bazaco, the awardee. Metropolitan also alleges that the location chosen by Bazaco, the Hotel Washington, is inadequate in terms of the space needed to satisfy the job fair requirements.

OPM reports that since May 1987, it has sponsored four job fairs in Washington, D.C. for recruiting hard-to-fill clerical and administrative positions. Metropolitan has conducted three of these job fairs and Bazaco has conducted one. These job fairs were held at Labor with OPM leasing the space. However, OPM found that the space at Labor was minimally adequate because it restricted crowd flow and prevented equally prominent booths for all agencies and posting of signs. OPM also found ventilation, lighting, availability of telephones, public parking and eating facilities to be inadequate. In addition, Labor's fee for OPM's lease of Labor space which had been \$5,000 per foot increased to \$10,000.

Accordingly, OPM decided to have the contractor lease different space for the job fair site and to allow the contractor more control and creativity which Labor's site prohibited. This RFQ was issued, under small purchase procedures, with the contractor required to "lease and pay for appropriate facilities for each job fair with OPM's approval." Participating agencies would then be charged fees which would be independently collected by the contractor.

Metropolitan offered Labor as a job fair site and OPM's technical evaluation panel rated Metropolitan unacceptable because Metropolitan, a for-profit organization, could not lease space directly from Labor. The contracting officer rated Metropolitan conditionally acceptable and requested best and final quotations from Metropolitan, Bazaco and one other offeror. On July 15, 1988, OPM telephoned Metropolitan requesting a best and final quotation and informed Metropolitan of the unacceptability of the proposed space at Labor because Metropolitan could not lease space from Labor and pay for it as the RFQ required. Since, on submission of best and final quotations Metropolitan still offered Labor as a job fair site, the contracting officer found Metropolitan technically unacceptable. The other two offerors were found technically acceptable and award was made to Bazaco on the basis that it was higher ranked technically and offered the lowest price.

OPM contends that Metropolitan's basis of protest that the Labor site was not prohibited by the RFQ is untimely as it should have been filed prior to the closing date for initial annotations. Metropolitan contends in its comments on OPM's

report that it was unable to clarify in its July 15 telephone conversation with an OPM official the reason why Labor space could not have been paid for by Metropolitan under the procedures used in past job fairs under which OPM leased the space and the contractor reimbursed OPM. Metropolitan now argues that due to this lack of clarification it was unable to ascertain if Labor was totally unacceptable or if OPM was simply requesting other options from Metropolitan.

Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). This requirement is applicable to RFQs issued under small purchase procedures. Sheila J. Baldwin, B-223717, Aug. 7, 1986, 86-2 CPD ¶ 168.

This RFQ specifically required the contractor to "lease and pay for appropriate facilities for each job fair with OPM's approval." This is a clear statement that the contractor, not OPM, would have to lease the facilities it was offering. Accordingly we do not agree with Metropolitan that the RFQ was ambiguous. Rather, we think Metropolitan's view that it could offer space of labor is colored by its experience in past job fair contracts under which it was provided space at Labor which had been leased by OPM. Metropolitan simply refused to acknowledge that this RFQ was changed so that it would now have to lease space directly. Since Metropolitan could not lease the labor site the above quoted provision required Metropolitan to lease source other space. In light of the above Metropolitan protest the use of labor is denied. To the extent that Metropolitan is challenging the requirement in the solicitation which effectively basis the offer of the labor site it is untimely as Metropolitan should have known from the above quoted language that OPM would not lease the Labor and Metropolitan protested this matter after closing sit for Metropolitan 4 CFRs 21.2 (a) (1).

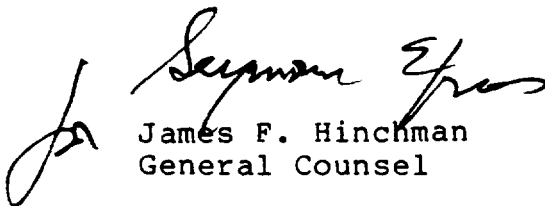
Likewise, Metropolitan was required to protest OPM's alleged failure to give it more time before best and final quotations were due prior to closing. Accordingly, Metropolitan's protests, which were filed after award was made against OPM's interpretation of the RFQ and the time given to submit its best and final quotation are dismissed as untimely.

With regard to Metropolitan's objection to the failure of an OPM official to discuss further the unacceptability of the

Labor site, solicitations issued under the small purchase procedures do not contemplate the type of discussions that occur in a full scale negotiated procurements. Rotair Industries, Inc., B-219994, Dec. 18, 1985, 85-2 CPD ¶ 683. In any event, as noted above, Metropolitan acknowledges that it was informed that the Labor site was unacceptable and another site had to be chosen. Therefore, OPM pointed out Metropolitan's deficiency and permitted it to revise its offer to correct the deficiency, which is the essence of meaningful discussions. Essex Electro Engineers, Inc., et al., B-211053.2 et al., Jan. 17, 1984, 84-1 CPD ¶ 74.

With respect to the suitability of the Hotel Washington, since Metropolitan was properly found technically unacceptable, and there were two technically acceptable offerors (one of which offered space to which Metropolitan has not objected), Metropolitan would not be eligible for award even if its protest on this issue was sustained. Under these circumstances, Metropolitan is not an interested party to protest this issue. See GAFF Manufacturing, Inc., B-230934.3, June 16, 1988, 88-1 CPD ¶ 577; 4 C.F.R. §§ 21.0(a) and 21.1(a).

The protest is dismissed in part and denied in part.


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General Counsel